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16 UNITED STATES DISTRICT COURT  
17 SOUTHERN DISTRICT OF CALIFORNIA  
18

19 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR0972-WQH  
20 )  
21 Plaintiff, ) Date: May 19, 2008  
22 v. ) Time: 2:00 p.m.  
23 ) The Honorable William Q. Hayes  
24 )  
25 RAMON VASQUEZ-CABRALES (1), )  
26 BERNICE PELAYO-HERNANDEZ (2), )  
27 DENISE PELAYO-HERNANDEZ (3), )  
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**I****STATEMENT OF THE CASE**

On April 9, 2008, a federal grand jury in the Southern District of California returned a three-count Indictment charging Ramon Vasquez-Cabralles, Bernice Pelayo-Hernandez, and Denise Pelayo-Hernandez (collectively “Defendants”) with transportation of illegal aliens and aiding and abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II). On April 10, 2008, Defendants were arraigned on the Indictment and each Defendant pled not guilty. The motion hearing is on May 19, 2008. The United States hereby files the following motions for reciprocal discovery and leave to file further motions.

**II****STATEMENT OF FACTS****A. OFFENSE CONDUCT****1. Events Leading To Apprehension**

On March 25, 2008, Border Patrol Agents were assigned to patrol duties near Boulevard, California in marked vehicles. Boulevard, California, is approximately five miles north of the U.S.-Mexico international border and approximately twenty miles east of Tecate, California, Port of Entry. At approximately 9:57 p.m., agents observed a white Ford F-150 pickup truck traveling northbound with the driver and passenger visible and the truck appeared heavily laden as it bounced excessively. Agents followed the truck onto Interstate 8. Agents performed a registration check and learned the truck was registered with a release of liability. In the agents experience, illegal alien and drug smugglers use vehicles with a release of liability in order to conceal the identity of the true owner of the vehicle. Agents pulled alongside the truck and observed the driver, later identified as Ramon Vasquez-Cabralles, and observed a tarp covering the bed area of the pickup truck. The truck exited the freeway and turned into a driveway with a locked gate. While the truck was stopped, agents observed several people moving around underneath the tarp in the back of the truck. Agents exited their vehicles and approached the truck, where they found the driver and nine individuals – one in the passenger seat, one on the floorboard, and seven laying down underneath the tarp in the bed of the truck. All nine individuals freely admitted to being citizens and nationals of Mexico without any documentation to enter or legally remain in the United States. All nine individuals were arrested and transported for processing.

1       At approximately 11:00 p.m., Border Patrol agents assigned to the Highway 94 checkpoint in  
2 Jamul, California, encountered two females, later identified as Bernice Pelayo-Hernandez and Denise  
3 Pelayo-Hernandez, approach the primary lanes in a gold Dodge Intrepid. Both females claimed to be  
4 United States citizens, but the driver, Bernice Pelayo-Hernandez, did not have any identification and  
5 was referred to secondary inspection for further checks.

6       While in the secondary area, Bernice Pelayo-Hernandez told agents that she had come directly  
7 from Tecate, Mexico, and that she had been in Mexico. However, records checks revealed that the car  
8 driven by Bernice Pelayo-Hernandez had not crossed into the United States from Mexico within the last  
9 72 hours. Bernice Pelayo-Hernandez freely admitted that she contacted a friend, named  
10 “Ramon/Eduardo” to work as a scout for alien smuggling. Her role was to drive past the Golden Acorn  
11 Casino and let “Ramon/Eduardo” know whether the area was clear of Border Patrol and California  
12 Highway Patrol. Bernice Pelayo-Hernandez said she had not be contacted and so she assumed that the  
13 vehicle for which she was a scout had been caught. Agents arrested Bernice and Denise Pelayo-  
14 Hernandez for alien smuggling.

15           **2. Post-Arrest Statements**

16       Agents advised Bernice Pelayo-Hernandez of her Miranda rights, she acknowledged she  
17 understood her rights, and agreed to waive her rights and speak with agents without the presence of  
18 counsel. Bernice Pelayo-Hernandez, who is a citizen of the United States, said she had been contacted  
19 several times in the past week by a man to see whether she would work as a scout driver for an alien  
20 smuggling vehicle. She told agents that she met the man only once and that she and her sister, Denise,  
21 have smuggled aliens for the man in the past. On this occasions, she was to be paid \$200.00. Bernice  
22 Pelayo-Hernandez also told agents that her sister, Denise, had the registration to the pickup truck, which  
23 was driven by co-defendant Ramon Vasquez-Cabralles, in her purse in the event that they had to unload  
24 the aliens before the checkpoint, have the aliens walk around the checkpoint, while Bernice and Denise  
25 drove the empty truck through the checkpoint to the pickup area on the other side.

26       Agents advised Denise Pelayo-Hernandez of her Miranda rights, she acknowledged she  
27 understood her rights, and agreed to waive her rights and speak with agents without the presence of  
28 counsel. Denise Pelayo-Hernandez, who is a citizen of the United States, agreed to accompany her

1 sister, Bernice, as a scout driver for an alien smuggling vehicle. Denise Pelayo-Hernandez said that  
2 their job was to drive to the Border Patrol checkpoint on Highway 94 to see whether it was operational  
3 and communicate with the smugglers. Denise Pelayo-Hernandez admitted that her sister, Bernice, gave  
4 her the registration to the pickup truck, which was driven by co-defendant Ramon Vasquez-Cabralles.  
5 Denise Pelayo-Hernandez told agents that she did not know why her sister gave her the paperwork.

6                   **3. Material Witness Statements**

7                   Material Witnesses Eduardo Reyes-Rodriguez, Juan Carlos Yepez-Yepez, and Ramon Torres-  
8 Silva (collectively “Material Witnesses”), freely admitted to being citizens and nationals of Mexico  
9 without any documentation to enter or remain legally in the United States. Material Witnesses admitted  
10 that they were going to pay between \$1,300 and \$1,500 to be smuggled into the United States and  
11 transported to their destination therein. Material Witness Eduardo Reyes-Rodriguez, was shown a  
12 photographic lineup and was able to identify Defendant Vasquez-Cabralles as the driver of the truck.

13                   **B. DEFENDANTS’ CRIMINAL AND IMMIGRATION HISTORIES**

14                   Ramon Vasquez-Cabralles is a citizen and national of Mexico. Defendant Vasquez-Cabralles  
15 does not have any prior criminal convictions, however, he has been apprehended before by Border  
16 Patrol on or about February 11, 2008. Defendant Vasquez-Cabralles was removed to Mexico shortly  
17 thereafter.

18                   Bernice Pelayo-Hernandez is a citizen of the United States. She has no prior criminal  
19 convictions, but she has several prior apprehensions for alien smuggling at the San Ysidro, California,  
20 Port of Entry and at the Border Patrol Checkpoint on Highway 94 on or about: (1) March 4, 2004;  
21 (2) December 5, 2005; (3) November 16, 2007; and (4) January 21, 2008.

22                   Denise Pelayo-Hernandez is a citizen of the United States. She has no prior criminal  
23 convictions, but she has several prior apprehensions for alien smuggling, on the same days as her sister,  
24 Bernice, at the San Ysidro, California, Port of Entry and at the Border Patrol Checkpoint on Highway  
25 94 on or about: (1) March 4, 2004; and (2) January 21, 2008.

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III

# MEMORANDUM OF POINTS AND AUTHORITIES

**A. MOTION FOR RECIPROCAL DISCOVERY**

The United States hereby requests Defendant deliver all material to which the United States may be entitled under Fed. R. Crim. P. 16(b) and 26.2.

**1. Defendant's Disclosures Under Fed R. Crim. P. 16(b)**

7 The United States has voluntarily complied and will continue to comply with the requirements  
8 of Fed. R. Crim. P. 16(a). As of the date of this Motion, the United States has produced, to each  
9 Defendant, 136 pages of discovery (including reports of the arresting officers and agents, criminal  
10 history reports, documents concerning Defendant's prior convictions and immigration history) and one  
11 DVD-ROM containing each Defendant's videotaped, post-arrest statements. As of the date of this  
12 Motion, the United States has **not** received any reciprocal discovery from Defendant. Therefore, the  
13 United States invokes Fed. R. Crim. P. 16(b), requiring that reciprocal discovery be provided to the  
14 United States.

15 The United States hereby requests Defendant permit the United States to inspect, copy, and  
16 photograph any and all books, papers, documents, photographs, tangible objects, or make copies of  
17 portions thereof, which are within the possession, custody or control of Defendant and which Defendant  
18 intends to introduce as evidence in his case-in-chief at trial.

19 The United States further requests that it be permitted to inspect and copy or photograph any  
20 results or reports of physical or mental examinations and of scientific tests or experiments made in  
21 connection with this case, which are in the possession or control of Defendant, which he intends to  
22 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends  
23 to call as a witness. Because the United States will comply with Defendant's request for delivery of  
24 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.  
25 16(b)(1). The United States also requests that the Court make such order as it deems necessary under  
26 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it  
27 is entitled.

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**2. Witness Statements Under Fed. R. Crim. P. 26.2**

2 Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a  
3 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in  
4 accordance with the Jencks Act.

5 The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after  
6 the witness has testified. In order to expedite trial proceedings, the United States hereby requests  
7 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before  
8 trial to be set by the Court. Such an order should include any form in which these statements are  
9 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

**B. MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

11       Should new information or legal issues arise, the United States respectfully requests the  
12 opportunity to file such further motions as may be appropriate.

IV

## **CONCLUSION**

15 For the foregoing reasons, the United States requests the Court grant the United States' Motions  
16 for Reciprocal Discovery and Leave to File Further Motions.

DATED: April 28, 2008

Respectfully submitted,

KAREN P. HEWITT  
United States Attorney

/s/ Joseph J.M. Orabona  
JOSEPH J.M. ORABONA  
Assistant United States Attorney